

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:	
IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER ADOPTING NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS	DOCKET NO. INU-03-1

ORDER REGARDING NINE-MONTH PROCEEDING SCHEDULE; RULING ON QWEST'S REQUEST TO POSTPONE IDENTIFICATION OF RELEVANT GEOGRAPHIC MARKETS; GRANTING MOTION TO ADMIT NON-RESIDENT COUNSEL; DENYING MCI'S MOTION FOR DISCOVERY; AND ORDERING SPECIFIC INFORMATION

(Issued January 16, 2004)

In an open meeting on February 20, 2003, the Federal Communications Commission (FCC) adopted rules concerning the obligations of incumbent local exchange carriers (ILECs) to make elements of their networks available on an unbundled basis. Although the FCC's written order memorializing its decisions (FCC 03-36) was not released until August 21, 2003, key findings were announced in a press release on February 20, 2003. Among other matters, the FCC made a presumptive finding of impairment on a location-by-location basis with respect to certain high capacity loops and dedicated transport.¹ Additionally, the FCC

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) (Triennial Review Order). See ¶¶ 328-360.

determined on a national level that CLECs are impaired without access to unbundled local circuit switching when serving mass market customers. The FCC set forth a specific process to be used if the national presumption is to be rebutted.² The text of the FCC order was released on August 21, 2003, and published in the Federal Register on September 2, 2003, to be effective on October 3, 2003.

The FCC provided that a state commission would have nine months from the effective date of its order to rebut the presumption of "impairment" as it affects mass market switching in an individual state. After the FCC's meeting, the Utilities Board (Board) opened this docket and sought comments on procedural matters in advance of the release of the text of the FCC's decision. The Board agreed with the commenters that a proceeding should be initiated only if an ILEC filed a petition and evidence indicating Board review was required and set a deadline of October 20, 2003, for such a request to be filed.

The Board specified that because the FCC found it appropriate to consider its specified factors on a market-by-market basis, any notice of intent to file a petition to rebut the national presumption should include a description of the geographic markets the ILEC intends the Board to examine.

Qwest filed a petition to initiate a nine-month case under the TRO and a request that the identification of relevant geographic markets be postponed until after discovery. Qwest contends that full and complete discovery responses from other providers are critical to its ability to precisely define the markets where a finding of

² *Id.* at ¶¶ 459-485.

non-impairment is appropriate. The Board understands the dilemma Qwest has described and will grant the request by Qwest to postpone its identification of relevant geographic markets until the filing of its direct testimony in this proceeding. Further, the Board previously indicated that if an ILEC filed a petition requiring further hearings it would set a schedule for those proceedings at that time. The Board will set the schedule for its determination related to the presumption of "impairment" as it affects mass market switching in Iowa.

MCI, Inc. (MCI), filed a motion on December 19, 2003, requesting that the Board issue requests for information to non-party CLECs identified in Exhibit C to its motion. The motion was served by MCI on all CLECs identified in Exhibit C. No responses have been filed to the motion. The Board is hesitant to issue discovery requests on behalf of a party without that party first attempting to obtain the responses without Board intervention. However, the Board recognizes that the FCC indicated that state commissions were to examine information in the possession of Qwest, as well as information in the possession of CLECs and other providers.³ Therefore, the Board will direct Qwest (as a petitioning ILEC) and all CLECs to respond to the requests for information attached to this order as Attachment A. All responses should be filed with the Board for its use in making the determinations required by the FCC.

³ *Id.* at ¶ 488

The FCC also directed state commissions to approve a batch hot cut process or explain why such a process is not necessary in a particular market. The Board directed each affected ILEC to provide details regarding its current hot cut processes. Information was filed as required by Frontier Communications of Iowa, Inc., Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, and Qwest. Subsequent to those filings, the Board issued an order regarding participation in a multi-state batch hot cut forum to collaboratively consider Qwest's process. In its order, issued on November 7, 2003, the Board directed the simultaneous filing of direct testimony by all parties on impasse issues. The filing date for that direct testimony was previously set as January 20, 2004. Following the last of the multi-state forums held in Denver, Colorado, January 6-8, 2004, the parties discussed and agreed that rescheduling of that direct testimony date was advisable so that the transcript of the final forum would be available for use in preparing testimony. The Board agrees that extending the direct testimony is sensible to ensure that the direct testimony is as complete as possible.

Finally, a motion was filed by AT&T Communications of the Midwest, Inc., and TCG Omaha (collectively AT&T) requesting that several out-of-state counsel be permitted to represent it in this proceeding. Local counsel has been retained for purposes of service. The requests to permit appearances, by out-of-state attorneys will be granted by the Board.

IT IS THEREFORE ORDERED:

1. The request by Qwest to postpone its identification of relevant geographic markets is granted. Qwest is directed to identify the relevant market in its direct testimony in this proceeding.
2. The motion for issuance of Board requests for information, filed by MCI, Inc., on December 19, 2003, is denied.
3. The deadline for direct testimony for the issues related to Qwests "Batch Hot Cut Process" is extended. All direct testimony shall be filed on or before January 23, 2004.
4. The following procedural schedule is established for the portion of this proceeding to make a determination regarding the presumption of "impairment" as it affects mass market switching in Iowa:
 - a. All CLECs shown on Attachment B and Qwest shall file responses to the requests for information (Attachment A) on or before February 11, 2004.
 - b. All parties shall file prepared direct testimony, with supporting exhibits and workpapers on or before February 25, 2004.
 - c. All parties shall file any prepared responsive testimony, with supporting exhibits and workpapers, on or before April 7, 2004.
 - d. A hearing for the purpose of receiving testimony and cross-examination of all testimony related to the national presumption of

"impairment" as it affects mass market switching in Iowa will commence at 10 a.m. on May 10, 2004, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. To the extent necessary, the hearing shall continue on May 11-14, 2004. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

e. Any party desiring to file an initial brief, may do so on or before May 26, 2004.

f. Any party desiring to file a reply brief, responding to the arguments raised in any other party's initial brief, may do so on or before June 2, 2004.

5. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

6. In the absence of objection, all responses to the information requested by the Board in this order shall become a part of the evidentiary record.

7. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

8. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of the hearing.

9. Pursuant to 199 IAC 7.7(11), the deadline for filing responses to motions will be no later than five days from the date the motion is filed. All motions should be served on all other parties, and on all persons who have filed a petition to intervene that has not yet been ruled upon, by facsimile transfer or by electronic mail as well as by United States mail, on or before the date of filing.

10. The Executive Secretary of the Board is directed to mail a copy of this order, thereby giving notice of the information requested by the Board, to each person listed on Attachment B to this order.

11. The motion requesting that Robert M. Pomeroy, Jr., member in good standing of the Colorado Bar, be permitted to appear and represent AT&T in this proceeding is granted.

12. The motion requesting that Thomas R. O'Donnell, member in good standing of the Colorado Bar, be permitted to appear and represent AT&T in this proceeding is granted.

13. The motion requesting that Thorvald A. Nelson, member in good standing of the Colorado Bar, be permitted to appear and represent AT&T in this proceeding is granted.

14. The motion requesting that James K. Tarpey, member in good standing of the Colorado and New York Bars, be permitted to appear and represent AT&T in this proceeding is granted.

15. The motion requesting that Walter F. Eggers, III, member in good standing of the Wyoming Bar, be permitted to appear and represent AT&T in this proceeding is granted.

16. The motion requesting that Gary B. Witt, member in good standing of the Colorado, California, and District of Columbia Bars, be permitted to appear and represent AT&T in this proceeding is granted.

17. The motion requesting that Mary B. Tribby, member in good standing of the Colorado, Illinois, and South Dakota Bars, be permitted to appear and represent AT&T in this proceeding is granted.

18. The motion requesting that Letty S.D. Fiesen, member in good standing of the Colorado Bar, be permitted to appear and represent AT&T in this proceeding is granted.

19. The motion requesting that Richard S. Wolters, member in good standing of the Illinois Bar, be permitted to appear and represent AT&T in this proceeding is granted.

20. The motion requesting that Steven H. Weigler, member in good standing of the Florida and Colorado Bars, be permitted to appear and represent AT&T in this proceeding is granted.

21. The motion requesting that Rebecca B. DeCook, member in good standing of the Colorado Bar, be permitted to appear and represent AT&T in this proceeding is granted.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16th day of January, 2004.

ATTACHMENT A
INU-O3-1

A. Requests for information submitted to CLECs

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.
2. Identify each ILEC wire center district (i.e., the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.
3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term. See, e.g. FCC Form 477, Instructions for the Local Competition and Broadband Reporting Form.
4. For each switch identified in response to Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch's existing configuration and component parts.
5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DSO lines; and (c) business customers to whom you provide DS1, ISDN-PRI, or other high capacity lines. For purposes of this question, "high capacity" means DS1 or equivalent of higher capacity lines, including, but not limited to DS1, ISDN-PRI, DS3, Ocn.

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *triennial Review Order*.
7. Provide a list of all switches from which you offer or provide switching capacity to another local service provide for use in providing qualifying service anywhere in the state.

Hot Cut Process

1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.
3. Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.
4. List each task that is part of the batch hot cut process described in the answer to the preceding questing. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.
5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

B. Requests for Information Submitted to Petitioning ILEC (Qwest)

Switching

1. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that you directly serve.
2. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through resale.
3. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through UNE-P.
4. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through the CLECs own facilities.
5. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that you directly serve.
6. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through resale.
7. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through UNE-P.
8. For each wire center in your territory in the state, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).
9. For each wire center in your territory in the state, please provide the number of in-service collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation that you are providing.
10. For each wire center in your territory in the state, please provide the number of provisioned collocation arrangements that you have in place that have yet to be activated, and for each collocation arrangement, please indicate the type of collocation.

11. For each wire center in your territory in the state, please provide the number of pending collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation.

Hot Cut Process

1. Provide, in an electronic format, on a monthly basis, the number of UNE-P lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
2. Provide, in an electronic format, on a monthly basis for every wire center, the number of UNE-L: lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
3. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
4. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the sources of the data; i.e., time/motion studies, SME analysis, etc.
5. Describe a batch hot cut process that Qwest would implement to meet the FCC's requirement to establish a hatch hot cut process. Include an estimate of number of lines per batch.
6. List each task that is part of the batch hot cut process described in the answer to the above question regarding a batch process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e., time/motion studies, SME analysis, etc.
7. List each task that is part of the batch hot cut process that is not included in the current hot cut process.
8. List each task that is part of the current hot cut process that is not included in the batch hot cut process.

9. On a monthly basis, provide the total number of residential lines served and the number of residential lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail residential lines, UNE served residential lines, and Wholesale served residential lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
10. For each wire center, on a monthly basis, provide the total number of business mass-market lines served and the number of business mass-market lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail business mass-market lines, UNE served business mass-market lines, and Wholesale served business mass-market lines. Explain how Qwest determined which business lines were mass-market lines and which are enterprise lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
11. If the tasks related to the hot cut process for lines served using integrated digital line carriers differs from the process used for other lines, discuss how the process is different and list the tasks that must be added specifically for the lines served using integrated digital line carriers. Include the time required to accomplish those tasks.
12. On a monthly basis, provide the average time a customer's service was disconnected due to the hot cut process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
13. On a monthly basis, provide the number of technicians during each month who have transferred a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who perform the manual process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
14. On a monthly basis, provide the number of technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who can perform the manual process. Do not include management or supervisory personnel who can perform these tasks but do not do so as part of their

regular work effort. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

15. On a monthly basis for every wire center, provide, in an electronic format, the number of hot cuts performed. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
16. Provide a list of all carriers with which Qwest has an interconnection agreement of the provision of local service in the state.
17. Provide a list of all carriers to which Qwest has sold collocation services in the state. For each carrier, list the wire centers where the carrier is collocated.
18. Provide a list of Qwest wire centers with indicators that identify whether the office is unstaffed, has a technician on duty but the technician can not perform hot cuts, or has a technician on duty and the technician can perform hot cuts. For unstaffed offices and offices where the technician can not perform hot cuts, specify the number of miles that the technician must drive and driving time to reach that office from the closest office where a technician who can perform hot cuts is normally on duty.
19. If a batch cut process is developed, does that make it more or less likely that an electronic loop provisioning process will be implemented?

C. Requests for Information Submitted to both CLECs and Petitioning ILEC – Switching

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.
2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.
3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.
4. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:
 - a. the make model, age, and current software upgrades of each switch;
 - b. the geographic location and the switch;
 - c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;
 - d. provide the capacity of each switch, including:
 - (i) percentage of switch capacity in use;
 - (ii) percentage of switch capacity reserved for your company's own use and future use; and

- (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.
- e. For each switch identified, please state in detail:
 - (i) the anticipated service life of the switch; and
 - (ii) whether your company intends to utilize the identified switch for the full-anticipated service life.

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